

AT RICHMOND, SEPTEMBER 19, 2008

2008 SEP 19 A 9:52

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00295

Ex Parte: In re: proposed amendments
to Payday Loan Act regulations

ORDER ADOPTING FINAL REGULATIONS

On June 17, 2008, the Commission issued an Order to Take Notice of new regulations proposed by the Bureau of Financial Institutions ("Bureau") to implement extensive amendments to the Payday Loan Act ("the Act"), §§ 6.1-444 et seq. of the Code of Virginia that were adopted by the General Assembly in 2008. In its Order the Commission provided interested parties an opportunity to submit written comments on or before July 25, 2008, and a further opportunity to offer oral comments at a public hearing to be conducted on August 5, 2008. The Order also required the proposed regulations to be published in the Virginia Register of Regulations. That publication was completed on July 7, 2008.¹

Amendments to the Act made by Chapter 849 of the 2008 Acts of Assembly require the Commission to certify and contract with one or more third parties to develop, implement, and maintain a real-time Internet-accessible database that contains such payday loan information as the Commission may require. The Act as amended prevents individual borrowers from obtaining payday loans under various circumstances, such as if they have outstanding payday loans or repaid previous payday loans on the same day they are seeking new payday loans, or if they are members of the military services of the United States or the spouses or other dependents of such members. The law also provides borrowers the option under certain circumstances to repay their

¹ 24:22 V.A.R. 3048 et seq. July 7, 2008.

payday loans by means of extended payment plans or extended term loans, and requires borrowers who elect either of those options to wait a period of time after repaying their loans before obtaining new payday loans. It also modifies the amount of interest and fees that may be charged by a licensed payday lender, provides that the term of a payday loan must be at least two times a borrower's pay cycle, and imposes additional requirements and limitations.

Many of the reforms are complex and warrant substantial changes to the Commission Payday Lending Rules, 10 VAC 5-200-10 et seq. The amendments to the Act are generally effective January 1, 2009, but the implementing regulations must be finalized well in advance so that the database can be developed in conformity with the regulations and operational before January 1, 2009. The proposed amendments to the regulations (i) specify the information that licensees are required to collect and transmit to the payday lending database and establish rules governing what licensees must do if they are unable to access the database at the time that they are required to transmit information to the database; (ii) limit licensees' access to the database and require licensees to transmit limited information to the database in connection with certain loans that remain outstanding as of January 1, 2009; (iii) instruct licensees how to determine borrower's pay cycle and minimum loan term, and require licensees to return the check given as security for a loan to a borrower if the loan is repaid in full with cash or good funds instrument; (iv) establish the rules applicable to extended payment plans and extended term loans, including when these types of repayment arrangements may be elected by borrowers; (v) require licensees to provide consumers with oral and written notices regarding extended payment plans and extended term loans, and address the waiting periods associated with these repayment arrangements; (vi) contain definitions for "member of the military services of the United States" and "other dependent of a member of the military services of the United States," and establish the

process by which licensees are required to determine whether an individual is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States; (vii) make various changes to 10 VAC 5-200-40, which relates to the prepayment of a payday loan, as well as 10 VAC 5-200-60, which pertains to the required posting of charges; and (viii) revise the text of the payday lending pamphlet, which licensees must give to all consumers prior to entering into payday loan transactions.

Written comments on the proposed regulations were received from the Community Financial Services Association of America ("CFSA"); the Virginians Against Payday Loans ("VAPL"); the Virginia Partnership to Encourage Responsible Lending ("VaPERL"); the Center for Responsible Lending ("CRL"); the Office of the Attorney General, Division of Consumer Counsel ("AG"); Veritec Solutions, LLC ("Veritec"); and Checks Mate, Inc. ("Checks Mate"). The CFSA, VAPL, VaPERL, CRL, the AG, and Ward Scull, III, a businessman from Newport News, Virginia and one of the cofounders of VAPL, also appeared at the public hearing to offer oral comments and respond to the written comments submitted by others. The Commission has considered all comments received, both written and oral, and hereby adopts a number of changes to the proposed regulations as part of its final regulations and as discussed below.

10 VAC 5-200-10. Definitions.

First, CFSA recommended that the definition of "duplicate original" be clarified to allow e-signed documents. We find that such clarification is not necessary. E-signed documents are not prohibited.

CFSA also asked that the regulations be further clarified to explicitly allow payments to be made by use of a credit card. The definition of "good funds instrument" currently includes "payment effected by use of a debit or credit card." This comment, however, caused us to

refocus on this definition and one of the new provisions in the law that states "[a] licensee shall not obtain authorization to electronically debit a borrower's deposit account in connection with any payday loan."² Accordingly, the inclusion of payment by use of a debit card must be struck from the definition of "good funds instrument." The inclusion of credit card payments will remain. Similarly, other references to payments by debit cards that appear elsewhere in the regulations should also be removed.

CFSA and VAPL focused on the definition of "[m]ember of the military services of the United States" and "[o]ther dependent of a member. . ." The proposed definitions were intended to be consistent with the Department of Defense's regulations.³ However, VAPL recommended adding "National Guard" to the list of services in the definition, and at the hearing CFSA stated that it had no objection.⁴ We agree that any member of the National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer should be explicitly included as a "member of the military services of the United States."

VAPL also recommended that the definition of "[o]ther dependent of a member. . ." be revised to include persons receiving more than half of their income from any married couple including a member of the military and his or her spouse. The proposed regulation tracks the Department of Defense's regulation and will not be modified.

10 VAC 5-200-20. Requirements for licensees; operating rules; acquisitions.

The CRL had a number of technical changes to reinforce the importance of the real-time entry and accuracy of the data in the database. CRL asserted that licensees therefore should be

² Virginia Code § 6.1-459(24).

³ Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 32 C.F.R. § 232.3(c).

⁴ Transcript 66.

held to a high standard of expediency and accuracy of reporting.⁵ Several of those changes have been incorporated.

A number of commenters focused their attention on 10 VAC 5-200-20 F, the provisions that define borrowers' minimum loan terms. The AG addressed this provision, and at his recommendation we have incorporated revisions to address a borrower who is paid more frequently than weekly. Such borrower's minimum loan term should be 14 days, which is two times the minimum term loan allowed currently by statute. VAPL was concerned that a borrower paid semi-monthly with a minimum loan term of 30 days, as proposed, would not receive a second paycheck on months with 31 days before loan repayment would be due. VAPL therefore recommended the minimum loan term for borrowers paid semi-monthly be revised to 31 days. VAPL had a similar concern with borrowers paid monthly, and recommended the minimum loan term for those borrowers be revised to 62 days. We have adopted those changes.

VaPERL recommended adding "Veteran Benefits or other forms of pension received monthly" to examples of monthly sources of income in addition to monthly paychecks. CFSA noted that "to include is to exclude."⁶ It is our intent for this section to define the minimum loan term for all borrowers paid or receiving income on a monthly basis from whatever source that income may be derived. Consistent with CFSA's suggestion, we have deleted the examples, and the regulation now simply refers to a borrower paid monthly.

The formula set forth in 10 VAC 5-200-20 F 5 was the topic of extended discussion in written and oral comments. Several commenters recommended the Commission choose a more certain and less complicated loan term in place of the formula approach in the proposed

⁵ Transcript 43-46.

⁶ Transcript 66.

regulations. The recommendations ranged from a minimum loan term of 14 days to 60 days. We will revise this regulation to provide that the minimum loan term for a borrower who is paid either less frequently than monthly (*i.e.*, his or her pay cycle is greater than 30 days) or on an irregular basis not covered in 10 VAC 5-200-20 F 1 will be 62 days.

CFSA next sought guidance on what a licensee should retain to document a borrower's pay cycle. The regulations are hereby revised to advise licensees that supporting documentation may include, but not be limited to, a pay stub if the pay cycle is clearly indicated thereon or a representation by the borrower in the written loan application.

CFSA also sought clarification that the prohibition contained in 10 VAC 5-200-20 H did not preclude use of Check 21 clearing. This concern is not justified. The regulations as drafted do not prohibit depository institutions from processing checks in accordance with Check 21.

VAPL offered language to clarify that a licensee shall hold no more than one security check. That language is consistent with the statute and we will incorporate it.

The AG also suggested revisions to 10 VAC 5-200-20 M to require a licensee to return a borrower's check not only when a loan is repaid in full with cash, but also when it is canceled. He also recommended that licensees be required to return the security check immediately if the borrower repays or otherwise satisfies a payday loan with cash. Those revisions are also appropriate and are hereby made.

10 VAC 5-200-33. Extended payment plans.

VaPERL urged the Commission to allow borrowers to elect an extended payment plan to repay a payday loan even after a loan is past due. However, § 6.1-459(27)(a)(ii) of the Act provides that borrowers may elect "at any time on or before its due date, to repay such fifth payday loan by means of an extended payment plan as provided in subdivision 26(b)." The

proposed regulation reconciles the timing provisions for all extended payment plan elections with the specific language in the statute for extended payment plans elected in conjunction with a fifth payday loan. Therefore, a borrower is permitted to enter into an extended payment plan at any time on or after the date a loan is made through the date that the loan is due to be repaid. However, 10 VAC 5-200-70 H explicitly allows mutually agreeable alternative payment plans, and we have added language to cross-reference that provision.

The regulations provide that a licensee shall permit a borrower to repay a payday loan "in at least four equal installments over a term of at least 60 days." The VAPL recommends the regulations provide for a minimum term of at least 90 days, arguing that borrowers should have the benefit of an extended payment plan term longer than the minimum loan term, noting that at 60 days, a borrower paid monthly would have no extension over his or her minimum loan term that would be otherwise available. VAPL urges the Commission to require licensees to offer minimum terms of no less than 90 days for extended payment plans. VaPERL also asked the Commission to provide guidance to licensees to determine the correct term for each borrower by accounting for individual financial circumstances. We find it appropriate to adhere to § 6.1-459(26)(b) of the Act, which explicitly provides that an extended payment plan shall have a term of at least 60 days.

CFSA suggested that the regulations should provide for "substantially equal payments" and for payments to be spread out "substantially evenly" over the term of the loan. The change proposed by CFSA makes the regulation more ambiguous, and conflicts with Virginia Code § 6.1-459(26)(b) of the Act. The language in the Act is very specific, and provides for "at least four equal installments over an aggregate term of at least 60 days." We observe, however, the

normal and acceptable business practice is that when a payment due date falls on a holiday or weekend, the payment is due on the next business day.

Also in this section of the regulations, CFSA and VAPL contend that a licensee should not be prohibited from exchanging security checks, or accepting a subsequent and smaller security check in place of the original security check when a borrower makes an installment payment under an extended payment plan. VAPL offered specific language changes, and at the hearing CFSA agreed to that language.⁷ We find those changes to be reasonable.

VAPL next turned to the written notice required to be posted by licensees, and suggested that it should be more personalized and clarify when the rolling -2-month period during which a borrower is allowed only one extended payment plan begins. We have no objection to the first suggestion; however, we will slightly modify VAPL's personalization to make the notice more accurate relative to eligibility. We do not think the desired clarification is necessary or belongs in the written notice.

CFSA complains that the length of the oral notice is too long. Other commenters thought the proposed oral notice is important and helpful to consumers. We also agree that oral notice is important but want to avoid a situation where a lengthy prescribed statement is read so quickly that in reality it provides little or no actual notice of the extended payment plan option and its features. We will therefore modify the oral notice prescribed in the proposed regulations to instead require a licensee to (i) orally notify an applicant that he is eligible for an extended payment plan, (ii) direct the applicants to read the written notice posted in the licensee's office or the "Borrower Rights and Responsibilities" pamphlet, and (iii) advise the applicant that the

⁷ Transcript 102.

licensee is available to answer any questions. We believe this approach will protect borrowers more effectively than a rushed reading of a long text.

10 VAC 5-200-35. Five payday loans within 180 days.

Although an extended payment plan is different from an extended term loan, which is provided as an option to a borrower seeking a fifth payday loan within 180 days, many of the comments we received on this section of the regulations were similar, such as comments supporting the addition of language to allow borrowers to exchange security checks when making an installment payment. We will adopt parallel changes in this section of the regulations.

CFSA also urged the Commission to eliminate the written and oral notice of the availability of an extended term loan, arguing that such notice is not required by the Act. CFSA again specifically complained that the oral notice required by this section of the regulations was burdensome and too long. Although not expressly required by the Act, requiring notice is well within our authority and is essential to fulfilling the intent of the General Assembly. We will, however, also modify the oral notice relating to an applicant's eligibility for an extended term loan.

Finally, VAPL urged the Commission to include payday loans made between October 1, 2008 and December 31, 2008, for purposes of determining how many loans a borrower obtained in any rolling 180-day period, rather than beginning that count on January 1, 2009. We decline to make that change. Chapter 849 is generally effective January 1, 2009, and beginning both the rolling 180-day and 12-month periods applicable to extended payment plans and extended term loans, respectively, on that effective date provides a consistent start date.

10 VAC 5-200-40. Borrower prepayment[; right to cancel].

Although no commenters addressed the majority of this section of the regulations, several changes, most notably explicit inclusion of a borrower's right to cancel a payday loan, and the provisions addressing the prepayment of a payday loan (particularly when an extended payment plan or extended term loan has been elected) were necessitated by the amendments to the Act and other changes adopted in these regulations.

VAPL did urge the Commission to modify 10 VAC 5-200-40 F to require partial prepayments on extended payment plans and extended term loans to result in a pro-rata adjustment of the total interest due on a loan. The statute, however, requires equal payment installments which would preclude pro-rata interest adjustments, as each installment is effectively a partial prepayment. A prepayment that results in full payment or satisfaction of a loan may result in a pro-rata interest adjustment.

10 VAC 5-200-70. Additional business requirements and restrictions.

VAPL first suggests that this section of the regulations be modified to include a requirement that licensees post a sign that members of the military and their dependants are prohibited under the Act from getting a payday loan in Virginia. We find that one more sign is not necessary, as it will quickly become evident that such lending is not allowed.

This section of the regulations also reiterates the statutory provision providing that a licensee shall not make a payday loan to a member of the military or their spouse or other dependant, and further directs that four questions be included in the loan application. First, consistent with our earlier revision to the definition of a "member of the military services of the United States," we will add references to "National Guard" in these questions. VAPL also suggests adding a clear and explicit prohibition against a licensee making a payday loan to an

applicant unless the applicant answers "no" to all four questions. We believe such prohibition is reasonable and comports with the Act as amended. CFSA also asked the Commission to substitute the Department of Defense certification for the four questions included in the regulations.⁸ We note that the prohibition in these regulations is broader than that contemplated by the Department of Defense certification.

One final comment addressed this section. Specifically, VAPL recommended extensive revision to 10 VAC 5-200-70 F, which we had not proposed to change. VAPL would have us impose a requirement that licensees provide payday lending notices, applications, and other materials in Spanish to all applicants for whom Spanish is a native language. VAPL would further direct licensees to not make payday loans to any applicant whose native language is something other than English or Spanish unless the licensee determines that the applicant can read and understand the documents, or the licensee reads and explains the documents to the applicant in a language the applicant can comprehend, or the applicant is accompanied by someone who can and does read and explain the documents to the borrower. This policy directive was not addressed by the General Assembly despite the opportunity to do so amidst extensive debate. Accordingly, we decline to make this policy determination in these regulations.

10 VAC 5-200-80. Payday lending pamphlet text.

Numerous changes to the text of the pamphlet are necessary to correspond to statutory amendments and changes adopted elsewhere in the regulations, and should be self explanatory. Also, the AG suggested adding language to the pamphlet directing certain applicants to contact credit counseling agencies or consumer finance companies. VAPL made a similar suggestion

⁸ Transcript 101.

relative to another section of the regulations that would have required licensees to provide a Federal Trade Commission publication to applicants who were declined loans.⁹ We believe that such additions go beyond the requirements of the Act, and decline to incorporate them, although we note that the Commission's website has a list of licensed credit agencies.

10 VAC 5-200-110. Payday lending database.

CFSA raised concern that the regulations imply that a prospective borrower must furnish a current Virginia driver's license or identification card issued by the Virginia Department of Motor Vehicles or "DMV" in order to apply for a payday loan. CFSA contends that such a requirement is too restrictive, and that licensees have always made loans to persons who did not reside within Virginia. It recommends that the requirement be modified to provide that any current government issued identification that includes a photograph of the prospective borrower may be used and relied upon by a licensee to verify a borrower's identity. Counsel for the Bureau explained that it was not the intent to limit borrowers to those with a Virginia driver's license or identification card, but countered that the modification suggested by CFSA would allow borrowers to use multiple identification cards, thus creating several unique borrower identification numbers to be entered into the database which would allow an individual borrower to circumvent the Act and provide the borrower with the opportunity to hold more than one outstanding payday loan at any one time. We agree with the Bureau that we must carefully consider the means of borrower identification to eliminate such opportunities. A single consistent source document containing identifying information is necessary to create a unique borrower identification for purposes of tracking payday loan activity in the database as

⁹ VAPL would provide for such notice in 10 VAC 5-200-110 E.

contemplated by the Act. We agree, however, that the regulations should be clarified to allow use of driver's licenses and identification cards issued by states other than Virginia.

Veritec, a database provider in several other states, also addressed borrower identification. Veritec commended the Commission's effort to limit the personal data collected and transmitted from an individual borrower, but stated that for the database to effectively function, a balance between limiting the transmission of personal information and adequate data point collections must be achieved. "To facilitate effective fraud detection, an additional data point . . . is needed." Veritec recommended the Commission also collect the applicant's date of birth. We will adopt that recommendation.

Veritec also noted that the normal practice in other states already using payday lending databases is to identify borrowers by means of borrowers' Social Security Numbers. Although the industry standard appears to be to use a borrower's full Social Security Number as the unique borrower identification number, numerous laws have been enacted or proposed that prohibit or significantly restrict the identification of individuals by means of their Social Security Numbers. Furthermore, storing borrowers' full Social Security Numbers in a centralized database increases the risk of identity theft. Accordingly, we find that we are required to consider and adopt a different means of uniquely identifying borrowers in the payday lending database. As noted above, we find that a current driver's license or identification card issued by the state licensing authority in a borrower's state of residence provides a single consistent source document that contains a combination of information sufficient to create a unique identifier for each borrower. Furthermore, at least in Virginia, a driver's license or identification card also includes a picture of the borrower. Borrowers will be uniquely identified in the database using a combination of the last four digits of their driver's license or identification card number, their numeric date of birth,

and the first five digits of their zip code. If the General Assembly subsequently enacts legislation to expressly require Social Security Numbers to be used to uniquely identify borrowers in the payday lending database, we will modify our regulations accordingly. To further protect borrowers' identities, licensees will also be required to redact a borrower's driver's license or identification card number so that only the last four digits remain visible on the copy that is to be retained in their files.

CFSA and the AG recommend elimination of 10 VAC 5-200-110 C 7, which requires licensees to obtain and transmit data including "[w]hether the applicant is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States." They contend that the Act prohibits licensees from making payday loans to such persons, and therefore the removal of this information from what is required to be transmitted will reduce the complexity of the database, speed up the data entry process, and eliminate unnecessary information from the database. We agree. The Bureau, however, proposed this data point to facilitate responding to the directive of the General Assembly to "report to the Chairman of the House and Senate Commerce and Labor Committees regarding the utilization of payday loans, including . . . effectiveness of the prohibitions on military lending" To facilitate the collection of data to respond to this legislative requirement, we will add a provision, new subsection N, to require licensees to report on a daily basis the number of individuals who were unable to obtain loans due to their status as a member of the military or the spouse or dependent of such a member.

This section of the regulations provides a list of additional information that a licensee must transmit to the database if an applicant is eligible for a payday loan. Subdivision F 5 includes "[s]ource of income for repayment of loan (employment or Social Security)." Both the

AG and the CFSA urge the Commission to strike this data item. They contend that the source of funds for repayment should not matter, and this requirement is unnecessary. We agree.

Both the AG and CFSA also recommend elimination of a required data field in Subdivision J 2, which is the "method of repayment or satisfaction (*e.g.*, cash, good funds instrument, check given to licensee as security for loan, other personal check, etc.)." They again contend that there is nothing in the Act that makes information concerning the source of funds used to repay or satisfy a payday loan necessary to the database or significant for future use, but will unnecessarily increase the amount of information maintained in the database. We agree with this recommendation as well and have deleted this data requirement.

The AG, however, also recommends an addition. Specifically, he suggests that licensees should be required to update the database when a judgment they obtained for a payday loan is paid. CFSA agreed, but expressed concern that licensees may not know a judgment has been paid on the same date it is paid, and urges the Commission to allow licensees additional time to enter such data. We will incorporate the AG's suggestion, but licensees will not be required to enter the data until the date they learn that the judgment has been satisfied.

The regulations provide procedures for those times in which a licensee is unable to access the database due to technical problems beyond the licensee's control, and require the licensee to collect specific information including the first and last name of the person in the call center who provides the results of a query. Veritec stated that given concerns for the safety and security of call center employees, it is standard and commonplace industry practice for call center employees to instead provide a "pseudonym, user name or a customer service representative identification number" and suggested a customer service representative identification number would provide the same level of accountability and verification as a first and last name. We

appreciate this concern and have modified the regulations to permit the use of an identification number.

Subsection O of the regulations limits licensees' access to data in the database. It was suggested that licensees should be allowed access to all data that the individual licensee has entered into the database. Such access would provide the licensee with no more information than it should already possess, but would enable the licensees to reconcile internal records with the information submitted to the database, and correct information previously submitted as required by Subdivision K 2. On consideration, we find such limited access would provide a better means of assuring quality control over the accuracy of the data in the database, and should be permitted.

Veritec emphasized the need to input historical data for transactions that will remain open on or after January 1, 2009, and urged the Commission to require licensees to input such data prior to being granted access to the database for verification of applicant eligibility. The regulation already directs such data to be collected and transmitted to the database. However, as a practical matter it will be impossible for the database provider or us to timely determine whether all such historic data has been uploaded by January 1, 2009. While we agree that such data is necessary, we decline to include a provision as suggested by Veritec.

10 VAC 5-200-120. Enforcement

Finally, VaPERL and CRL recommended the regulations include substantial penalties for licensees that engage in intentional, willful, negligent, or repeated delays or inaccuracies in reporting data to the database. This section of the regulations already sets forth the penalties and consequences for any violations of the Act or regulations.

THE COMMISSION, having considered the proposed regulations and comments, is of the opinion that the attached regulations should be adopted as final.

THEREFORE IT IS ORDERED THAT:

- (1) The new regulations at Chapter 200 of Title 10 of the Virginia Administrative Code entitled "Payday Lending Rules," which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED effective January 1, 2009;
- (2) The Commission's Division of Information Resources shall forthwith cause a copy of this Order, including a copy of the final regulations, to be forwarded to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations;
- (3) This Order and the attached regulations shall be posted on the Commission's website at www.scc.virginia.gov/case; and
- (4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the final regulations to all licensed payday lenders and such other interested persons as he may designate.

A True Copy
Teste:


Clerk of the
State Corporation Commission

STATE CORPORATION COMMISSION

CH 200 10-VAC-5-200 Payday Lending Rules

10VAC5-200-10. Definitions.

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Payday Loan Act (§6.1-444 et seq. of the Code of Virginia).

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of clause 1 (vi) of §6.1-459 of the Code of Virginia and this chapter means a day on which the licensee's office is open for business as posted as required by subsection A of 10VAC5-200-70.

"Commission" means the State Corporation Commission.

"Duplicate original" for purposes of subdivision 2 of §6.1-459 of the Code of Virginia and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of clause 1 (vi) of §6.1-459 of the Code of Virginia and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle such payments, payment effected by use of a ~~[debit or]~~ credit card.

"Liquid assets" for purposes of the Act and this chapter means cash on hand and in depository institutions, money market funds, commercial paper, and treasury bills.

"Member of the military services of the United States" for purposes of the Act and this chapter means a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

"Other dependent of a member of the military services of the United States" for purposes of the Act and this chapter means (i) an individual under the age of 18 whose mother or father is a member of the military services of the United States or (ii) an individual for whom a member of the military services of the United States provided more than one-half of the individual's financial support for 180 days immediately preceding the date the individual applied for a payday loan.

"Small," as used in the definition of "payday loan" in §6.1-444 of the Code of Virginia, means \$2,500 or less.

B. Other terms used in this chapter shall have the meaning set forth in §6.1-444 of the Act.

10VAC5-200-20. Requirements for licensees; operating rules; acquisitions.

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times. The bureau may require submission of proof of maintenance of such liquid assets at any time.

B. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee

shall pay a fee of \$50 per place of business to the commission. Licenses will only be replaced or reissued if the licensee is in compliance with all laws and regulations applicable to the conduct of the licensee's business.

D. If a person has filed a bond with the bureau, as required by §6.1-448 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases engaging in business as a payday lender.

E. Upon becoming licensed, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

F. For purposes of clause 1 (v) of §6.1-459 of the Code of Virginia, the number of days in a borrower's pay cycle and the corresponding minimum loan term shall be determined by a licensee in accordance with the following:

1. If a borrower is paid on a weekly [or more frequent] basis, there are seven days in the borrower's pay cycle and the minimum loan term shall be 14 days.
2. If a borrower is paid on a biweekly basis, there are 14 days in the borrower's pay cycle and the minimum loan term shall be 28 days.
3. If a borrower is paid on a semimonthly basis, there are 15 days in the borrower's pay cycle and the minimum loan term shall be [30 31] days.
4. If a borrower is paid on a monthly basis [or a borrower's source of income for repayment of a loan is Social Security], there are 30 days in the borrower's pay cycle and the minimum loan term shall be [60 62] days.

5. If a borrower is paid either [(i)] less frequently than monthly[,] or [(ii)] on an irregular basis [(e.g., self-employed), the number of days in a borrower's pay cycle shall be calculated by dividing 90 by the number of payments the borrower received within the past 90 days, rounded to the nearest whole number (e.g., 8.49 would be rounded to eight days and 8.50 would be rounded to nine days). The minimum loan term shall be calculated by multiplying the preceding result by two. However, in no event shall the minimum loan term for any borrower be less than 14 days (but less frequently than weekly), there are 30 days in the borrower's pay cycle and minimum loan term shall be 62 days].

G. A licensee shall retain supporting documentation for a borrower's pay cycle in each loan file[, which may consist of (i) a copy of a borrower's pay stub or similar periodic earnings statement that clearly reflects the borrower's pay cycle, or (ii) a representation by the borrower in the written loan application].

H. A licensee shall not electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries.

I. With the exception of the check given by a borrower to a licensee as security for a payday loan, a licensee shall not collect or receive from a borrower any interest or fees permitted by §6.1-460 of the Code of Virginia, either in whole or in part, prior to the date of loan maturity unless the borrower is voluntarily making a full or partial prepayment pursuant to 10VAC5-200-40. If a borrower enters into an extended payment plan or extended term loan, a licensee shall not collect or receive any interest or fees, either in whole or in part, prior to the due date of a scheduled installment unless the borrower is voluntarily making a payment in advance.

J. The amount of the check given by a borrower to a licensee as security for a payday loan shall not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by §6.1-460 of the Code of Virginia. If a borrower enters into an extended payment plan at the time a loan is obtained, the amount of the check shall not include any interest.

K. [A Upon satisfaction of a loan or upon learning that a loan has been satisfied, a] licensee shall attach to each loan agreement [~~that has been satisfied~~] either (i) a copy of the signed and dated receipt for the payment that satisfied the loan or (ii) if a judgment was obtained and satisfied, a copy of the judgment marked satisfied.

L. Except as otherwise provided in subdivision B 2 of 10VAC5-200-33 or subdivision D 1 of 10VAC5-200-35, the check used to secure a payday loan shall be dated as of the date the loan is due. A licensee shall not deposit or otherwise present for payment a check given as security for a loan, including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan, prior to the date stated on the face of the check. [A licensee shall not require or accept multiple checks or any additional or alternative security in connection with a payday loan.]

M. If a borrower [(i) cancels a loan in accordance with subsection G of 10VAC5-200-40, or (ii)] repays [~~or otherwise satisfies~~] a loan in full with cash or good funds instrument [and not with the check securing the loan], the licensee shall [immediately] return the check given as security for the loan to the borrower [~~within three business days of repayment or satisfaction~~].

10VAC5-200-33. Extended payment plans.

A. In any rolling 12-month period, an eligible borrower may elect to pay an outstanding payday loan from any licensee by means of an extended payment plan. A

borrower shall not be eligible to obtain an extended payment plan if the borrower obtained an extended payment plan within the preceding 12 months.

B. A borrower may enter into an extended payment plan at any time on or after the date a loan is made through the date that the loan is due to be repaid. A borrower shall not be permitted to repay a past due payday loan by means of an extended payment plan. [If a loan is past due and a borrower cannot obtain an extended payment plan, a licensee may voluntarily accept payments from a borrower in accordance with subsection H of 10VAC5-200-70.]

1. If an eligible borrower elects an extended payment plan, a licensee shall permit the borrower to repay the amount owed in at least four equal installments over a term of at least 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended payment plan (e.g., if the term is 60 days and there are four installments, an installment shall be due every 15 days).

2. If a borrower enters into an extended payment plan on the date a loan is made, the check used to secure the loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended payment plan. [A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended payment plan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated as of the date the final installment is due, for the remaining amount owed to the licensee.]

3. A borrower who elects to repay a payday loan with an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.

C. A licensee shall provide notice to borrowers of the potential availability of the extended payment plan option in accordance with the provisions of this subsection.

1. A licensee shall conspicuously post in each licensed location a written notice in at least 24-point bold type informing borrowers that they may be eligible to enter into an extended payment plan. The minimum size for such written notice shall be 24 inches by 18 inches.

2. The title of the written notice, which shall appear in at least 48-point bold type, shall be "NOTICE – EXTENDED PAYMENT PLANS AVAILABLE TO ELIGIBLE BORROWERS AT NO ADDITIONAL COST."

3. The required text of the written notice shall be as follows:

[The Payday Loan Act gives eligible borrowers If you are eligible, you have] the option of repaying a payday loan by means of an extended payment plan. You may only obtain an extended payment plan once in any rolling 12-month period (even if you obtain loans from different lenders or locations). You may obtain an extended payment plan at any time on or after the date that you receive your loan through the date that your loan is due to be repaid. Under an extended payment plan, you will be permitted to repay the amount you owe in at least four equal installments over a term of at least 60 days. You will not be charged any additional interest or fees in connection with an extended payment plan, and interest will not accrue during the term of an extended payment plan. [When you make a payment on an extended

payment plan, you will have the option of providing a replacement security check for the remaining amount you owe.] Please be advised that if you obtain an extended payment plan, you will not be permitted to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall immediately provide oral notice to the applicant that [(i)] the applicant is eligible to repay the payday loan through an extended payment plan~~[- The; (ii) information about extended payment plans may be found on the poster in the licensee's office or in the "Borrower Rights and Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended payment plans. When providing this notice, the] licensee shall also [read aloud to the applicant the text of the written notice as specified in subdivision C 3 of this section. direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Extended Payment Plans."]~~

D. A licensee shall [immediately] give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended payment plan. The receipts shall also state the loan balance due after each payment.

E. A licensee shall retain the written and signed extended payment plan document identifying the terms of the extended payment plan and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subsection D of this section. Upon full repayment or satisfaction of an extended payment plan, a licensee shall mark both the original loan agreement and original

extended payment plan document with the word "paid" or "canceled," return both items to the borrower, and retain copies in its loan records.

10VAC5-200-35. Five payday loans within 180 days.

A. A borrower obtaining a fifth payday loan within any rolling 180-day period may elect, at the option of the borrower, (i) to repay the loan through an extended payment plan, unless the borrower previously elected an extended payment plan within the preceding 12 months, or (ii) to obtain the loan in the form of an extended term loan.

B. If a borrower does not obtain an extended payment plan or extended term loan in connection with his fifth payday loan in 180 days, the borrower shall not be eligible for another payday loan until 45 days after the date the fifth payday loan is paid or otherwise satisfied in full.

C. If a borrower previously obtained an extended payment plan within the preceding 12-month period, the borrower shall not be eligible to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan. However, if an eligible borrower elects to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan, the provisions of 10VAC5-200-33 shall apply. A borrower who elects to repay such loan by means of an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.

D. The following provisions shall apply to extended term loans.

1. An extended term loan is a payday loan, as this term is defined in §6.1-444 of the Code of Virginia. As with other payday loans, an extended term loan shall be secured by a check that does not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by §6.1-460 of the

Code of Virginia. The check used to secure an extended term loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended term loan. [A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended term loan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated as of the date the final installment is due, for the remaining amount owed to the licensee.]

2. If an eligible borrower elects an extended term loan, a licensee shall permit the borrower to repay the amount owed in four equal installments over a term of 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended term loan (i.e., an installment shall be due every 15 days).

3. The terms of an extended term loan shall be set forth in a written agreement signed and dated by the borrower. An eligible borrower may elect the extended term loan option only on the date a payday loan is made.

4. A borrower who obtains an extended term loan shall not be eligible for another payday loan during the longer of 90 days following the date the extended term loan is paid or otherwise satisfied in full, or 150 days following the date the extended term loan is obtained. Subject to one of the applicable waiting periods associated with a fifth loan in any rolling 180-day period, a borrower may be eligible for consecutive extended term loans or multiple extended term loans in any rolling 12-month period.

5. A licensee shall [immediately] give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended term loan. The receipts shall also state the loan balance due after each payment.

6. A licensee shall retain the written and signed extended term loan agreement and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subdivision 5 of this subsection. Upon full repayment or satisfaction of an extended term loan, a licensee shall mark the original extended term loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its loan records.

E. A licensee shall provide notice to borrowers of the potential availability of the extended term loan option in accordance with the provisions of this subsection.

1. A licensee shall conspicuously post in each licensed location a written notice in at least 24-point bold type informing borrowers that they may be eligible to obtain an extended term loan. The minimum size for such written notice shall be 24 inches by 18 inches.

2. The title of the written notice, which shall appear in at least 48-point bold type, shall be "NOTICE – EXTENDED TERM LOANS AVAILABLE TO BORROWERS OBTAINING A FIFTH PAYDAY LOAN WITHIN 180 DAYS."

3. The required text of the written notice shall be as follows:

The Payday Loan Act gives borrowers obtaining their fifth payday loan within 180 days the option to receive it in the form of an extended term loan. An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another

extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. [When you make a payment on an extended term loan, you will have the option of providing a replacement security check for the remaining amount you owe.] Please be advised that if you obtain an extended term loan, you will not be permitted to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer). However, even if you do not choose an installment payment arrangement, you will still be unable to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended term loan, the licensee shall immediately provide oral notice to the applicant that [(i)] the applicant is eligible to obtain an extended term loan[. The; (ii) information about extended term loans may be found on the poster in the licensee's office or in the "Borrower Rights and Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended term loans. When providing this notice, the] licensee shall also ~~[read aloud to the applicant the text of the written notice as specified in subdivision 3 of this subsection.~~ direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Five Payday Loans within 180 days." In addition, if the payday lending database advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall also comply with subdivision C 4 of 10VAC5-200-33.

F. Payday loans made prior to January 1, 2009, shall not be considered for purposes of determining how many loans a borrower obtained in any rolling 180-day period.

10VAC5-200-40. Borrower prepayment[; right to cancel].

A. In order to prepay a payday loan in full, a borrower shall only be required to pay the principal amount advanced as well as any accrued and unpaid fees. A borrower shall be permitted to make partial payments, in increments of not less than \$5.00, on the loan at any time without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

B. For purposes of the Act and this chapter, the interest and fees will loan fee permitted by subsections A and B of §6.1-460 of the Code of Virginia shall be deemed "accrued" on a straight line basis over the term of a payday loan. A licensee shall calculate interest charges using either a 360-day year or a 365-day year. The verification fee permitted by subsection C of §6.1-460 of the Code of Virginia shall be deemed accrued in full at the time a payday loan is made.

C. 1. A borrower choosing to prepay his payday loan in full shall only be responsible for the verification fee and the pro-rata portion of the total interest and fees loan fee based upon the number of days which that have elapsed between the loan disbursement date and the date of repayment. (For example, if a \$400 loan with fees of \$60 and a term of 10 days a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 28 days, and a 360-day year is prepaid in full after five seven days, the borrower shall only be required to pay in cash or good funds instrument \$430 (\$400 + \$30) \$427.80 (\$400 + \$2.80 interest + \$20 loan fee + \$5.00 verification fee) to the licensee.)

2. A borrower choosing to make partial payments on a payday loan shall only be responsible for the verification fee and the pro-rata portion of the total interest and fees loan fee based upon the timing and amount of such partial payments. (For example, given a \$500 loan with fees of \$75 and a term of 10 days, a borrower making a partial payment of \$200 after five days shall only be required to pay a total of \$562.81 to the licensee (\$500 principal + \$62.81 interest (\$500 for five days = \$37.50, plus \$337.50 for five days = \$25.31)). In this example, \$37.50 of the borrower's \$200 partial payment would be applied toward interest and the remaining \$162.50 would be applied toward principal, thereby resulting in an outstanding balance of \$337.50 until maturity a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of [30 31] days, and a 360-day year, a borrower making a partial payment of \$200 after 15 days shall only be required to pay a total of [\$604.19 603.91] to the licensee (\$500 principal + [\$104.19 \$103.91] interest and fees). In this example, [\$62.50 \$60.89] of the borrower's \$200 partial payment would be applied toward interest (\$7.50) and fees [(\$50 \$(48.39) loan fee + \$5.00 verification fee) and the remaining [\$137.50 \$139.11] would be applied toward principal, thereby resulting in an outstanding balance of [\$362.50 \$360.89] until maturity. Based on this outstanding balance, the charges for the remainder of the term are [\$5.44 \$5.77] (interest on [\$362.50 \$360.89] for [15 16] days) + [\$36.25 \$37.25] (loan fee on [\$362.50 \$360.89] pro-rated for [15 16] days).)

D. If a borrower enters into an extended payment plan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee, any interest that accrued prior to the borrower entering into the extended payment plan, and the pro-rata portion of the total loan fee based upon the number of days that have

elapsed between the loan disbursement date and the date the loan would have been due if the borrower had not entered into the extended payment plan. The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended payment plan in full.

1. Example: Assume that a borrower who is paid on a [semi-monthly semimonthly] basis (minimum term of [30 31] days) obtains a \$500 loan on April 1 with an extended payment plan, an extended payment plan term of 60 days, no interest (interest does not accrue during the term of an extended payment plan), a 20% loan fee, a \$5.00 verification fee, and installment payments of \$151.25 due on April 16, May 1, May 16, and May 31. Since the borrower is paid on a semimonthly basis, the loan fee shall accrue over a period of [30 31] days. If the borrower prepays the extended payment plan in full on April 21, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), a pro-rata portion of the loan fee [~~(\$66.67)~~ (\$64.52)], and the verification fee (\$5.00) for a total of [~~\$571.67~~ \$569.52] to the licensee. If the borrower made an installment payment of \$151.25 on April 16, the payoff amount on April 21 would be [~~\$420.42 (\$571.67~~ \$418.27 (\$569.52) - \$151.25).

2. Example: Assume that a borrower who is paid on a semimonthly basis obtains a \$500 loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of [30 31] days, and a 360-day year. Next assume that the borrower elects an extended payment plan on April 23 with a term of 60 days and installment payments of \$154 due on May 8, May 23, June 7, and June 22. If the borrower prepays the extended payment plan in full on June 2, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued prior to the borrower electing an

extended payment plan (\$11), the entire loan fee (\$100), and the verification fee (\$5.00) for a total of \$616 to the licensee. If the borrower made installment payments of \$154 on both May 8 and May 23, the payoff amount on June 2 would be \$308 (\$616 - \$154 - \$154).

E. If a borrower enters into an extended term loan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the number of days that have elapsed between the loan disbursement date and the loan maturity date (i.e., the date the fourth installment is due). The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended term loan in full.

Example: Assume that a borrower obtains a \$500 extended term loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a 360-day year, a 60-day term, and installment payments of \$158.75 due on April 16, May 1, May 16, and May 31. If the borrower prepays the extended term loan in full on May 20, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued for 49 days (\$24.50), a pro-rata portion of the loan fee (\$81.67), and the verification fee (\$5.00) for a total of \$611.17 to the licensee. If the borrower made installment payments of \$158.75 on April 16, May 1, and May 16, the payoff amount on May 20 would be \$134.92 (\$611.17 - \$158.75 - \$158.75 - \$158.75).

F. Unless it results in the prepayment in full of an extended payment plan or extended term loan pursuant to subsection D or E of this section, a partial payment, excess payment, installment payment, or other payment received by a licensee in advance of the date the funds are due under the terms of the extended payment plan or extended term loan shall not result in a modification of the payment schedule or a pro-

rata adjustment of the total interest, if any, or loan fee. Payments made by a borrower pursuant to an extended payment plan or extended term loan shall be first applied to any past due installment and then to the next regularly scheduled installment.

G. Notwithstanding any provision of this section, a borrower shall have the right to cancel a payday loan (including an extended term loan or a loan repayable by means of an extended payment plan) at any time before the close of business on the next business day following the date of the loan by paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. The licensee shall not be entitled to charge or receive any interest or fees, including a verification fee, when a borrower cancels a payday loan.

10VAC5-200-60. Posting of charges.

A. A licensee shall conspicuously post in its licensed location a schedule of payments, fees and interest charges, with examples using (i) a \$300 loan payable in ~~seven days~~, 14 days, ~~and~~; (ii) a \$300 loan payable in ~~[30 31]~~days; (iii) a \$300 loan payable in ~~[60 62]~~ days; (iv) a \$300 loan payable through an extended payment plan that is elected on the date the loan is obtained; (v) a \$300 loan payable through an extended payment plan that is elected on the 15th day of a ~~[30-day 31-day]~~ term; and (vi) a \$300 extended term loan.

B. A licensee shall display its fees and interest charges not only as a dollar amount, but also as an Annual Percentage Rate, which shall be stated using this term, calculated in accordance with Federal Reserve Board Regulation Z (12 CFR 226.1 et seq.).

10VAC5-200-70. Additional business requirements and restrictions.

A. A licensee shall conspicuously post in its licensed locations the days and hours during which it is open for business.

B. A licensee shall not deposit or otherwise present for payment more than two times any check given by a borrower as security for a loan, and in no event shall a licensee recover from a borrower more than a total of \$25 attributable to returned check fees incurred by the licensee with respect to a single check.

~~C. A licensee shall not accept or require an allotment of military pay or any authorization of electronic funds transfer as security for repayment of a loan.~~ A licensee shall not knowingly make a payday loan to a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States. To enable a licensee to make this determination, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a payday loan]. A licensee shall not make a payday loan to an applicant unless the applicant answers "no" to all of the these questions]:

1. Are you a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

2. Are you married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

3. Are you under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

4. Was more than one-half of your financial support for the past 180 days provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

D. A licensee shall maintain in its licensed offices such books, accounts, and records as the Commissioner of Financial Institutions may reasonably require in order to determine whether such licensee is complying with the provisions of the Act and all rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved. Such records relating to loans, including loan applications, shall be retained for at least three years after final payment is made on any loan.

E. A licensee shall report, in accordance with §6.1-455 of the Code of Virginia, the institution of an action against the licensee under the Virginia Consumer Protection Act (§59.1-196 et seq. of the Code of Virginia) by the Attorney General or any other governmental authority.

F. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-200-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

G. A licensee shall not file or initiate a legal proceeding against a borrower until 60 days after the date of default on a payday loan, including defaults under extended payment plans or extended term loans, during which time the licensee and borrower may voluntarily enter into a repayment arrangement.

H. Nothing in the Act or this chapter shall be construed to prohibit a licensee from voluntarily accepting a payment on an outstanding loan from a borrower after the date

that such payment was due to the licensee. However, except as otherwise permitted by the Act and this chapter, the licensee shall not collect, receive, or otherwise recover any additional interest, fees, or charges from the borrower.

10VAC5-200-80. Payday lending pamphlet text.

The required text of the payday lending pamphlet referred to in 10VAC5-200-30 is as follows:

PAYDAY LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a payday loan in Virginia under the Payday Loan Act, §6.1-444 et seq. of the Code of Virginia. If you have any questions about payday lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/division/banking> <http://www.scc.virginia.gov/bfi>. The Bureau of Financial Institutions has available a "Consumer Guide to Payday Lending" that may be viewed at this website or obtained by calling the toll-free telephone number listed above.

In General: You are responsible for evaluating whether a payday loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, an account with overdraft protection, or a loan repayable over several months.

Notice from Lender: The lender is required to provide you with a clear and conspicuous printed notice advising you that a payday loan is not intended to meet long-

term financial needs and that you should use a payday loan only to meet occasional or unusual short-term cash needs.

Payday Lending Database: Before making a payday loan to you, a lender is required by Virginia law to access a database that contains detailed information about payday loans made to Virginia residents by all lenders licensed to do business in Virginia. The database will inform the lender whether you are eligible for a payday loan. If you are ineligible for a payday loan, the lender will provide you with the toll-free telephone number of the database provider, which you can use to find out the specific reason for your ineligibility. To enable the lender to check the database, you will be required to provide the lender with your original driver's license or ~~[DMV Identification Card~~ identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia)]. If you wish to obtain a payday loan but do not have a driver's license or ~~[DMV Identification Card~~ identification card], you will need to obtain a driver's license or ~~[DMV Identification Card~~ identification card] from the ~~[Department of Motor Vehicles~~ driver's licensing authority in your home state].

Prohibition on Loans to Individuals with Certain Previous or Outstanding Loans: Virginia law prohibits a lender from making a payday loan to you if (i) you currently have an outstanding payday loan; (ii) you paid or satisfied in full a previous payday loan on the same day that you are applying for a new payday loan; (iii) in the past 90 days you paid or satisfied in full a previous payday loan by means of an extended payment plan; (iv) in the past 45 days you paid or satisfied in full a fifth payday loan that you obtained within a period of 180 days; (v) in the past 90 days you paid or satisfied in full an extended term loan; or (vi) in the past 150 days you entered into an extended term loan.

It is important to note that the previous or outstanding payday loans referred to above include loans made by the same lender as well as any other lender conducting payday lending business in Virginia.

Prohibition on Loans to Members of the Military and their Spouses and Dependents: Virginia law prohibits lenders from making payday loans to members of the military services of the United States as well as their spouses and dependents. If you are a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [er] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer, the lender is prohibited from making a payday loan to you. The lender is also prohibited from making a loan to you if (i) you are married to such a member, (ii) you are less than 18 years old and the son or daughter of such a member, or (iii) more than one-half of your financial support for the past 180 days was provided by such a member.

Limitations on Security Interest / Prohibition on Obtaining Funds Electronically: The lender cannot require you to provide more than one check as security for any payday loan. The check cannot be post-dated must be dated as of the date your loan is due. The lender cannot require you to provide any security for your payday loan other than a check payable to the lender. The lender is also prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means.

One Loan at a Time / \$500 Maximum/Seven-Day Minimum Term Maximum: The lender cannot have loans (either single or in the aggregate) more than one loan outstanding to you at any one time in the principal amount of more than. If you currently have an outstanding payday loan from any lender, you cannot obtain another payday

~~loan. The maximum loan amount is \$500. By law, the specified due date of your loan must be at least seven days after the date that money is advanced to you.~~

Minimum Loan Term: Under Virginia law, your loan term must be at least twice as long as your pay cycle. For example, if you are paid on a weekly basis, your minimum loan term would be 14 days.

Fees, Charges, and Interest: The lender is permitted to charge you (i) interest ~~in the form of~~ at a simple annual rate of 36%, (ii) a loan fee not exceeding 45% 20% of the amount of money advanced to you (i.e., ~~\$45~~ \$20 per \$100 advanced), and (iii) a verification fee not exceeding \$5.00. For example, if the lender advances you \$300 for seven days, ~~the lender may charge you up to \$45 as a fee for obtaining the loan (an Annual Percentage Rate of 782%).~~ If the lender advances you \$300 for 14 ~~30~~ 31 days, the lender may charge you up to ~~the same \$45 fee for obtaining the loan~~ \$9.00 \$9.30 interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of ~~\$74 (an Annual Percentage Rate of 391% 296%)~~ \$74.30. If the lender advances you \$300 for 30 ~~60~~ 62 days, the lender may charge you up to ~~the same \$45 fee for obtaining the loan~~ \$18 \$18.60 interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of ~~\$83 (an Annual Percentage Rate of 183% 166%)~~ \$83.60. Other than the specific fees and costs discussed in the section of this pamphlet entitled "Failure to Repay" (see below), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by the lender.

You will receive your loan proceeds in the form of either cash or a check from the lender. The lender cannot charge you a fee for cashing their check. Similarly, a check casher affiliated with the lender cannot charge you a fee for cashing the lender's check.

Written Agreement: The lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the lender. The

loan agreement is a binding, legal document that requires you to repay the loan. Make sure you read the entire loan agreement carefully before signing and dating it. The lender must provide you with a duplicate original of the loan agreement at the time of your loan transaction. If any provision of your loan agreement violates the Payday Loan Act (§6.1-444 et seq. of the Code of Virginia), the provision will not be enforceable against you.

Extended Payment Plans: Under Virginia law eligible borrowers have the option of repaying a payday loan by means of an extended payment plan. You may only obtain an extended payment plan once in any rolling 12-month period (even if you obtain loans from different lenders or locations). You may obtain an extended payment plan at any time on or after the date that you received your loan through the date that your loan is due to be repaid.

Under an extended payment plan, you are permitted to repay the amount you owe in at least four equal installments spread out evenly over a term of at least 60 days. You will not be charged any additional interest or fees in connection with an extended payment plan, and interest will not accrue during the term of an extended payment plan.

If you obtain an extended payment plan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

Five Payday Loans within 180 [days Days]: If you are obtaining a fifth payday loan within a rolling 180-day period, you have the option to (i) repay the fifth loan through an extended payment plan, unless you previously obtained an extended payment plan within the preceding 12 months, or (ii) obtain the loan in the form of an extended term loan.

You do not have to choose either one of these options. However, even if you do not obtain an extended payment plan or extended term loan, you will not be able to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

Extended payment plans are discussed above. If you are eligible to repay your fifth payday loan by means of an extended payment plan and choose to do so, you will not be able to obtain another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. If you obtain an extended term loan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer).

Other Businesses: A lender is prohibited by statute from engaging in other businesses, besides check cashing, unless permitted by order of the State Corporation Commission. A lender is also prohibited by statute from selling you any type of insurance coverage.

Loans for Other Products & Services: You are prohibited from using any of the money from your payday loan to purchase any other product or service sold at the lender's business location.

Right to Cancel: You have the right to cancel your loan at any time prior to the close of business on the next day the lender is open following the date your loan is made by paying the lender the amount advanced to you in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by using a credit [or ~~debit~~] card.

Partial Payments and Prepayments: You have the right to make partial payments (in increments of not less than \$5.00) on your payday loan at any time prior to its specified due date without ~~charge~~ penalty. If you make a partial payment, the total interest and loan fee you pay will be reduced (unless you have an extended payment plan or extended term loan -- see "Payments on Extended Payment Plans and Extended Term Loans" below). You have the right to receive signed, dated receipts for each payment made along with a statement of the balance remaining on your payday loan. You also have the right to prepay your loan in full before its specified due date without penalty by paying the lender in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by use of a credit [or ~~debit card~~], the amount of money advanced to you as well as any accrued and unpaid interest and fees.

Payments on Extended Payment Plans and Extended Term Loans: You have the right to prepay an extended payment plan or extended term loan without penalty. However, unless it results in the prepayment in full of an extended payment plan or extended term loan, a partial payment, excess payment, installment payment, or other payment you give to the lender in advance of the date the funds are due does not result in either a change to your payment schedule or a pro-rata adjustment of the total interest, if any, or loan fee that you will be required to pay. Payments you make on an extended payment plan or extended term loan are first applied to any past due installment and then to your next regularly scheduled installment. The lender must give

you receipts, signed and dated by the lender, for all payments you make on an extended payment plan or extended term loan. [When you make a payment on an extended payment plan or extended term loan, you have the option to give the lender a replacement security check for the remaining amount you owe.]

Lender to Return Original Loan Agreement: Upon repayment of your loan in full, the lender must mark your original loan agreement with the word "paid" or "canceled" and return it to you. If you obtained an extended payment plan, the lender is also required to mark your original extended payment plan document with the word "paid" or "canceled" and return it to you.

[Lender to Return Security Check: If you cancel your loan (see "Right to Cancel" above) or repay it in full with cash or by certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by using a credit card, the lender must immediately return the check you gave as security for the loan.]

No Rollovers, Extensions, Etc.: The lender cannot refinance, renew, extend, or rollover your payday loan.

Failure to Repay: Pay back your loan! Know when your payment is due and be sure to repay your loan on time and in full. You are responsible for having sufficient funds in your checking account on the due date of your loan so that your check does not bounce if the lender deposits it in his account. If you do not repay your loan by the specified due date, the lender may begin accruing interest on the principal amount of your loan at a maximum rate of 6% per year.

In collecting or attempting to collect a payday loan, the lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC §1692 et seq., regarding harassment or abuse,

false or misleading misrepresentations, and unfair practices in collections. The lender is also prohibited from threatening or beginning criminal proceedings against you if a check you provide to the lender bounces. If a lender knowingly violates this prohibition, the lender is required to pay you a civil monetary penalty equal to three times the amount of the dishonored check.

If you cannot or do not repay the loan: (i) the lender is permitted to recover from you any fee charged to the lender (maximum of \$25) as a result of your check being returned due to your account being closed by you or containing insufficient funds, or if you stopped payment on your check; and (ii) if the lender seeks and obtains judgment against you as a result of your returned check, the lender may obtain court costs and reasonable attorney's fees (total may not exceed \$250) if such costs and fees are awarded by the court.

The lender cannot file or initiate a legal proceeding against you until 60 days after the date that you default on a payday loan, including a default under an extended payment plan or extended term loan. During this 60-day period the lender may voluntarily enter into a repayment arrangement with you.

Legal Action Against Lender: You have the right to bring a civil action against the lender if you suffer a loss as a result of the lender violating any provision of the Payday Loan Act. If you are successful in your civil action, you have the right to be reimbursed for reasonable attorney's fees, expert witness fees, and court costs you have incurred in connection with your civil action. Losses suffered as the result of the lender's violation of the Payday Loan Act may also be pursued under the Virginia Consumer Protection Act (§59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

~~**Additional Protections for Borrowers in the Military/Borrowers Married to Members of the Military:** If you or your spouse is a member of the United States military, the lender is prohibited by law from (i) garnishing any military wages or salary; (ii) conducting any collection activity against you if you or your spouse is deployed to a combat or combat support posting or is a member of the Reserves or National Guard and called to active duty, for the duration of the deployment or active duty service; (iii) contacting your commanding officer or your spouse's commanding officer, or anyone in your chain of command or your spouse's chain of command, in an effort to collect a loan made to you; (iv) disregarding the terms of a loan repayment agreement that the lender negotiates through military counselors or third party credit counselors; and (v) making a loan to you if a military base commander has declared that a specific location of the lender's business is off limits to military personnel.~~

Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have against a payday lender, please contact the Bureau of Financial Institutions toll free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/division/banking> <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.

10VAC5-200-110. Payday lending database.

A. This section sets forth the rules applicable to the payday lending database referred to in §6.1-453.1 of the Code of Virginia.

B. Except as otherwise provided in this section, a licensee shall transmit all information to the database via the Internet. In order to maintain the confidentiality and

security of the information, a licensee shall not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless (Wi-Fi) connections, or other connections that are not secure. A licensee shall maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the database, including but not limited to installing and regularly updating malware protection (antivirus and antispyware) software and a firewall.

C. Prior to making a payday loan, a licensee shall transmit the following information to the database for purposes of determining whether an applicant is eligible for a payday loan. The licensee shall obtain the applicant information required by this subsection in accordance with the provisions of subsection D of this section.

1. Name of licensee and license number.
2. Office location of licensee.
3. [Name First and last name or identification number] of employee entering information into the database.
4. Applicant's first and last name.
5. Last four digits of applicant's driver's license number or [DMV Identification Card identification card] number.
6. Applicant's address.
7. [Whether the applicant is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States Applicant's date of birth].

D. 1. A licensee shall obtain the information required by subdivisions C 4, 5, [and] 6, and 7] of this section directly from the applicant's unexpired original driver's license or [DMV Identification Card identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia)], regardless of whether the information on the driver's license or [DMV Identification Card identification card] is still accurate. A licensee shall not accept photocopies, facsimiles, or other reproductions of a driver's license or [DMV Identification Card identification card].

2. A licensee shall photocopy the applicant's driver's license or [DMV Identification Card identification card, partially redact the driver's license number or identification card number so that only the last four digits of the number remain visible,] and retain the [redacted] photocopy in its records.

3. A licensee shall not accept a driver's license or [DMV Identification Card identification card] from an applicant when there is reason to believe that (i) it belongs to an individual other than the applicant or (ii) it is fake, counterfeit, or has been altered, fraudulently obtained, forged, or is otherwise nongenuine or illegitimate.

E. If the database advises a licensee that an applicant is ineligible for a payday loan, then the licensee shall inform the applicant of his ineligibility, instruct the applicant to contact the database provider for information about the specific reason for his ineligibility, and provide the applicant with the toll-free telephone number of the database provider.

F. If the database advises a licensee that an applicant is eligible for a payday loan, then the licensee shall transmit the following additional information to the database prior to making a payday loan:

1. Application date.

2. Loan number.

3. Date of loan.

4. Principal amount of loan.

[5. Source of income for repayment of loan (employment or Social Security).]

[6-5.] Interest rate.

[7-6.] Dollar amount of interest to be charged until date of loan maturity.

[8-7.] Dollar amount of loan fee to be charged.

[9-8.] Dollar amount of verification fee to be charged.

[10-9.] Dollar amount of total finance charges.

[11-10.] Annual [percentage rate Percentage Rate] (APR) of loan.

[12-11.] Number of days in applicant's pay cycle.

[13-12.] Number of days in loan term.

[14-13.] Date loan is due.

[15-14.] Dollar amount of check given by applicant to secure the loan [i.e., at the time the loan is made].

G. If the database advises a licensee that an applicant is eligible for an extended payment plan or extended term loan and the applicant subsequently elects an extended payment plan or extended term loan, then the licensee shall transmit the following additional applicable information to the database no later than the time the licensee closes for business on the date the applicant enters into the extended payment plan or extended term loan:

1. Date the extended payment plan or extended term loan is entered into.
2. Principal amount owed under the extended payment plan or extended term loan.
3. Number of installment payments and the amount of each payment to be made under the extended payment plan or extended term loan.
4. Date each installment payment is due under the extended payment plan or extended term loan.
5. Number of days in term of extended payment plan or extended term loan.

H. For purposes of this section, a licensee closes for business when it officially shuts its doors to the general public on a business day, or within one hour thereafter.

I. A licensee shall generate a separate printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan, and retain the printout in its loan records.

J. Except as otherwise provided in ~~[subdivision subdivisions]~~ 3[, 7, and 8] of this subsection, a licensee shall transmit the following additional information, as applicable, to the database no later than the time the licensee closes for business on the date of the event:

1. If a borrower cancels a payday loan, the date of the cancellation.
2. If a payday loan (including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan) is repaid or otherwise satisfied in full, (i) the date of repayment or satisfaction, [and] (ii) ~~[the method of repayment or satisfaction (e.g., cash, good funds instrument, check given to licensee as security for loan, other personal check, etc.), and (iii)]~~ the total net

dollar amount ultimately paid by the borrower in connection with the loan (i.e., principal amount of loan plus all fees and charges received or collected pursuant to §§6.1-460 and 6.1-461 of the Code of Virginia, less any amount refunded to the borrower as a result of overpayment).

3. If a check used to repay a loan in full is returned unpaid, the date the check is returned unpaid and the dollar amount of the check. A licensee shall transmit such information to the database no later than five calendar days after the date the check is returned unpaid.

4. If a licensee collects a returned check fee from a borrower, the dollar amount of the returned check fee.

5. If a licensee initiates a legal proceeding against a borrower for nonpayment of a payday loan, the date the proceeding is initiated and the total dollar amount sought to be recovered.

6. If a licensee obtains a judgment against a borrower, the date and total dollar amount of the judgment.

[7. If a judgment obtained by a licensee against a borrower is satisfied, the date of satisfaction. A licensee shall transmit such information to the database on the date the licensee learns that the judgment has been satisfied.]

[7-8.] If a licensee collects any court costs or attorney's fees from a borrower, the dollar amount of the court costs or attorney's fees. [A licensee shall transmit such information to the database on the date the licensee learns that the court costs or attorney's fees have been paid.]

[8-9.] If a licensee charges off a payday loan as uncollectible, the date the loan is charged off and the total dollar amount charged off.

K. 1. If any information required to be transmitted by a licensee to the database is automatically populated or calculated by the database provider, the licensee shall verify the information and immediately correct any inaccuracies or other errors.

2. If a licensee becomes aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

L. The following provisions address a licensee's inability to access the database at the time of loan application:

1. If at the time a licensee receives a loan application the licensee is unable to access the database due to technical problems beyond the licensee's control, the licensee shall contact the database provider's call center and request that the call center enter the information required by this section and query the database on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the result of each query (including the applicant's eligibility for an extended payment plan or extended term loan), the date and time of the phone call, and the first and last name [or identification number] of the person in the call center who provided the results of the query to the licensee.

2. If at the time a licensee receives a loan application the licensee is unable to access the database due to technical problems beyond the licensee's control and the database provider's call center is either closed or also unable to access the database, then the licensee may make a payday loan to an applicant if the applicant signs and dates a separate document containing all of the representations and responses to the questions set forth below and the prospective loan otherwise complies with the provisions of the Act and this

chapter. The document shall be printed in a type size of not less than 14 point and contain a statement that the representations and questions relate to loans obtained from either the licensee or another payday lender. The licensee shall retain the original document in its loan file and provide the applicant with a duplicate original. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to query the database.

a. The representations to be made by an applicant are as follows:

(1) I do not currently have any outstanding payday loans.

(2) I did not repay or otherwise satisfy in full a payday loan today.

(3) In the past 90 days I did not repay or otherwise satisfy in full a payday loan by means of an extended payment plan.

(4) In the past 45 days I did not repay or otherwise satisfy in full a fifth payday loan that was obtained within a period of 180 days.

(5) In the past 90 days I did not repay or otherwise satisfy in full an extended term loan.

(6) I did not obtain an extended term loan within the past 150 days.

(7) I am not a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(8) I am not married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard]

serving on active duty under a call or order that does not specify a period of 30 days or fewer

(9) I am not under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(10) One-half or less (including none) of my financial support for the past 180 days was provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [or] Coast Guard, [or National Guard] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

b. The questions to be presented to an applicant are as follows:

(1) In the past 12 months, have you obtained an extended payment plan in order to repay a payday loan? If the applicant's response is "no" and the applicant is eligible for a payday loan, then the licensee shall immediately ~~provide oral notice to the applicant that the applicant is eligible to repay the payday loan through an extended payment plan. The licensee shall also read aloud to the applicant the text of the written notice as specified in~~ provide the applicant with the oral notice prescribed in] subdivision C [3 4] of 10VAC5-200-33.

(2) Have you obtained four or more payday loans within the past 180 days? If the applicant's response is "yes" and the applicant is eligible for a payday loan, then the licensee shall immediately ~~provide oral notice to the applicant that the applicant is eligible to obtain an extended term loan. The licensee~~

shall also read aloud to the applicant the text of the written notice as specified in provide the applicant with the oral notice prescribed in] subdivision E [3 4] of 10VAC5-200-35.

3. If a licensee makes a payday loan based upon an applicant's written representations and responses, then the licensee shall transmit the information required by this section to the database no later than the time the licensee closes for business on the date the database becomes accessible to the licensee, either directly or through the database provider's call center.

M. The following provisions address a licensee's inability to access the database subsequent to loan application:

1. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall contact the database provider's call center and request that the call center enter the information required by this section on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the date and time of the phone call, and the first and last name [or identification number] of the person in the call center who entered the information on the licensee's behalf.

2. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database due to technical problems beyond the licensee's control and the database provider's call center is closed or also unable to access the database, then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date the

database becomes accessible to the licensee, either directly or through the database provider's call center. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

[N. By the close of business on each business day, a licensee shall transmit to the database the total daily number (even if 0) of individuals who were unable to obtain payday loans from the licensee because they are members of the military services of the United States, or the spouses or other dependents of members of the military services of the United States. If the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall transmit to the database the information required by this subsection no later than the time the licensee closes for business on the next business day that the licensee is able to access the database. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.]

[N. O.] A licensee shall have limited access to the information contained in the database. The database shall only provide a licensee with the following information: (i) whether an applicant is eligible for a new payday loan; (ii) if an applicant is ineligible for a new payday loan, the general reason for the ineligibility (e.g., the database may state that the applicant has an outstanding payday loan but it shall not furnish any details regarding the outstanding loan); and (iii) if an applicant is eligible for a new payday loan, whether the applicant is also eligible for an extended payment plan or extended term loan. [The database shall also permit a licensee to access information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information.] Except as [otherwise] provided in

this subsection, a licensee shall be prohibited from accessing or otherwise obtaining any information contained in or derived from the database.

[Q. P.] If the Commissioner of Financial Institutions determines that a licensee has ceased business but still has one or more outstanding payday loans that cannot be repaid due to the licensee's closure, the Commissioner of Financial Institutions may authorize the database provider to mark the outstanding loans as satisfied in the database in order to enable the affected borrowers to obtain payday loans in the future.

[P. Q.] 1. Except as provided in subsection F of 10VAC5-200-35, payday loans made on or after October 1, 2008, and prior to January 1, 2009, that remain outstanding on January 1, 2009, shall be considered for purposes of determining a borrower's eligibility for a payday loan. Accordingly, on or before January 1, 2009, a licensee shall transmit the following information to the database in connection with every payday loan made on or after October 1, 2008, that will or may be outstanding as of January 1, 2009:

a. Name of licensee and license number.

b. Office location of licensee.

c. [Name First and last name or identification number] of employee entering information into the database.

d. Borrower's first and last name.

e. Last four digits of borrower's driver's license number or [DMV-Identification Card identification card] number.

f. Borrower's address.

[g. Borrower's date of birth.]

[g. h.] Date loan funds were disbursed.

[h- i.] Date loan is due.

2. A licensee shall obtain and retain the borrower information required by this subsection in accordance with the provisions of subsection D of this section.

3. For every payday loan made on or after October 1, 2008, that remains outstanding as of January 1, 2009, a licensee shall transmit to the database all applicable information required by subsection J of this section [by within] the time [the licensee closes for business on the date of the event prescribed therein] or January 1, 2009, whichever is later.

10VAC5-200-120. Enforcement.

A. Failure to comply with any provision of the Act or this chapter may result in fines, license suspension, or license revocation.

B. Pursuant to §6.1-467 of the Code of Virginia, a licensee shall be subject to a separate fine of up to \$1,000 for every violation of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business. If a licensee violates any provision of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple loans or borrowers, the licensee shall be subject to a separate fine for each loan or borrower. For example, if a licensee makes five loans and the licensee violates two provisions of this chapter that are applicable to the five loans, the licensee shall be subject to a maximum fine of \$10,000.

C. If a licensee (i) fails to transmit information to the payday lending database in accordance with the Act or 10VAC5-200-110, (ii) transmits incorrect information to the database, or (iii) transmits information to the database in an untimely manner, the licensee shall be subject to a separate fine under §6.1-467 of the Code of Virginia for each item of data that is omitted, incorrect, or untimely. For example, if a licensee makes

three loans and fails to transmit two items of information to the database in connection with each of the three loans, the licensee shall be subject to a maximum fine of \$6,000.